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13 UNITED STATES DISTRICT COURT
14 NORTHERN DISTRICT OF CALIFORNIA

15
16 E-LOAN, INC., a Delaware corporation, No. C 06 2341 JCS
17 Plaintiff,
18 v.
19 ELOANS INCORPORATED, a Delaware
20 corporation,
21 Defendant.
22
23 ELOANS INCORPORATED, a Delaware
24 corporation,
25 Counterclaimant,
26 v.
27 E-LOAN, INC., a Delaware corporation,
28 Counter defendant.

1 Whereas, Plaintiff E-Loan, Inc. filed an action against Defendant Eloans
2 Incorporated on April 3, 2006 alleging, *inter alia*, trademark infringement, unfair competition,
3 passing off, violation of California Business & Professions Code § 14335, violation of California
4 Common Law Unfair Competition and Passing Off, and violation of California Business &
5 Professions Code §§ 17200, *et seq.*, relating to, *inter alia*, Defendant's use of the domain name
6 "eloans.com";

7 Whereas, Defendant Eloans Incorporated filed an answer, affirmative defenses
8 and counterclaim and sought, among other things, to cancel plaintiff's federal trademark
9 registrations; and

10 Whereas, the parties held a mediation before Beth Parker, Esq. on October 10,
11 2006 pursuant to this court's ADR Rules.

12 Therefore, pursuant to the mediation, the parties have agreed to settle the instant
13 case on the grounds set forth herein pursuant to this Mediator's Settlement Term Sheet
14 Agreement.

15 The parties agree as follows:

16 1. That Plaintiff E-Loan, Inc. is the owner of the following five United States
17 Patent Trademark Office service mark registrations (collectively the "E-Loan® service marks").

18 a. E-LOAN®—U.S. Registration No. 2,885,929. Registered on
19 September 21, 2004, for, *inter alia*, "lending services namely
20 providing on line applications for mortgages and consumer loans;
direct forwarding of on-line mortgage and consumer loan
applications to lending institutions; mortgage brokerage services,
all rendered via a global computer network."

21 b. E-LOAN and design®—U.S. Registration No. 2,885,824.
22 Registered on September 21, 2004, for, *inter alia*, "lending
23 services namely providing on line applications for mortgages and
24 consumer loans; direct forwarding of on-line mortgage and
consumer loan applications to lending institutions; mortgage
brokerage services, all rendered via a global computer network."
25 The E-LOAN and design® mark appears as follows:



- c. E-LOAN EXPRESS®—U.S. Registration No. 2,579,051. Registered on June 11, 2002, for, *inter alia*, “services for the mortgage banking industry, namely mortgage banking and mortgage brokerage provided via electronic computer communications networks.”
- d. MY E-LOAN®—U.S. Registration No. 2,523,218. Registered on December 25, 2001, for, *inter alia*, “financial services, namely, mortgage brokerage and lending services, consumer lending services, and commercial lending services offered via electronic communications networks.”
- e. ELOAN.COM® – U.S. Registration No. 3,003,136. Registered on October 4, 2005, for, *inter alia*, “services for the mortgage banking industry, namely mortgage banking and mortgage brokerage provided via electronic computer communications networks.”

2. Defendant Eloans, Incorporated, its agents, employees, officers and
directly herein the "Defendant") acknowledge the validity of plaintiff's E-Loan
and agree not to use said E-Loan Service Marks or any confusingly similar
eоф.

3. That the Defendant will take all steps necessary to transfer the domain com" and all of Defendant's right, title, and interest therein to Plaintiff within five the execution of this Agreement at no cost to Plaintiff, provided that Plaintiff for any administrative or other charges imposed by the domain registrar, directly relating to such transfer. Defendant agrees to execute any and all other t are required to effectuate the transfer of said eloans.com domain name and, if ees to appoint Plaintiff E-Loan, Inc., their agents or attorneys as attorneys-in-fact documents necessary to effectuate the terms of this Agreement.

4. Plaintiff E-Loan, Inc., agrees not to use, transfer or sell said eloans.com except as set forth herein, to any third party. In the event Plaintiff E-Loan, Inc. or transfer or activate said eloans.com domain name, Plaintiff E-Loan, Inc. will pay or its designee, the liquidated damage sum of \$85,000, plus five percent interest of transfer of the eloans.com domain name to Plaintiff. For purposes hereof, a transfer of the eloans.com domain name by Plaintiff to an affiliate of Plaintiff within the family of companies shall not constitute a transfer giving rise to the obligation to

1 pay the aforesaid \$85,000 to Defendant. In addition, the terms "use" or "activate" as set forth
2 herein shall mean solely and exclusively: (1) conducting any business through the eloans.com
3 domain with the intent of obtaining payments in connection therewith or deriving profits
4 therefrom; or (2) re-directing any visitors to the eloans.com domain to another website for
5 purposes of increasing business conducted through that other website. The terms "use" or
6 "activate" as set forth herein shall not include the mere ownership of the eloans.com domain or
7 bidding on the keyword "eloans" through any of the major Internet search engines, including,
8 without limitation, Google, MSN, and Yahoo.

9 5. The parties agree that this Agreement, and any subsequent formal
10 Agreement upon which this agreement is based, is assignable by Plaintiff E-Loan, Inc., either by
11 way of stock sale, merger, or the sale of all, or substantially all, of the assets of Plaintiff E-Loan,
12 Inc., without further permission or authorization from Defendant. Defendant may not transfer its
13 obligations hereunder without the expressed written permission of Plaintiff E-Loan, Inc., which
14 permission may be unreasonably withheld.

15 6. The parties release each other from all claims they may have against each
16 other relating to this dispute effective as of the date of transfer of the domain name eloans.com to
17 Plaintiff E-Loan, Inc. The parties contemplate exchanging mutual releases so as to set forth the
18 recitations under Civil Code Section 1542.

19 7. In the event of any breach of this Agreement, the prevailing enforcing
20 party shall be entitled to reasonable attorney's fees and costs.

21 8. The parties to this Agreement agree that this Court has continuing
22 jurisdiction of this matter and of this Agreement, or any subsequent more formal agreement, so
23 as to enforce the terms, purpose and intent of this Agreement.

24 9. In the event of any breach of this Agreement, or any subsequent more
25 formal agreement, the parties shall be entitled to immediate injunctive relief and/or specific
26 performance.

27 10. In the event of any action, claim or suit relating to or arising from the
28 terms of this Agreement, the parties herein agree to consent to have said action, claim or suit
SF/21688757.1

1 brought in the Federal Court for the Northern District of California, and expressly waive the right
2 to proceed in any other jurisdiction or forum.

3 Dated: October 10, 2006

4
5 By: 
6 James A. Gale
7 Attorneys for Plaintiff, E-Loan, Inc.

8
9 Dated: October 10, 2006

10 By: 
11 Lawrence G. Townsend
12 Attorneys for Defendant and Counterclaimant,
13 ELOANS INCORPORATED

14 Dated: October 10, 2006

15 Dated: October 10, 2006



16 Ylenia Lopez
17 Plaintiff E-Loan, Inc.

18 Dated: October 10, 2006

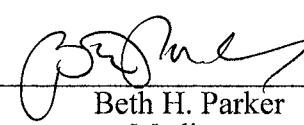
19 Dated: October 10, 2006



20 Gregory Ricks
21 Defendant Eloans Incorporated

22 Dated: October 10, 2006

23 Dated: October 10, 2006



24 Beth H. Parker
25 Mediator

26 Pursuant to paragraph 8 above, the Court herein retains jurisdiction to enforce the
27 terms of this agreement.

28 IT IS SO ORDERED.

29 Dated: October 18, 2006

